

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**AUDREY CRUZ,**

**Plaintiff,**

**v.**

**No. 13-cv-0764 JB/SMV**

**KMART CORPORATION;  
SUTTON PLACE INVESTMENTS, LLC;**

**Defendants.**

**ORDER TO SHOW CAUSE**

THIS MATTER is before the Court on Defendant Sutton Place Investments, LLC's Motion to Dismiss for Discovery Abuse [Doc. 24], filed on December 24, 2013.<sup>1</sup> Defendant Kmart, Corporation, joined in the motion on January 7, 2014. [Doc. 25]. Plaintiff has filed no response, nor requested an extension of time to do so. The Court will order Plaintiff to appear at a telephonic hearing on **March 5, 2014, at 10:00 a.m.**, and show cause why she should not be sanctioned.

Apparently, Plaintiff failed to appear for her properly noticed deposition on December 10, 2013. *See* [Doc. 24] at 2–3. Neither an objection to the deposition, nor a notice of non-appearance has been filed. As a result of Plaintiff's failure to appear at her deposition, both Defendants request dismissal of the case under Fed. R. Civ. P. 37(d)(1)(A)(i). [Doc. 24] at 3; [Doc. 25].

---

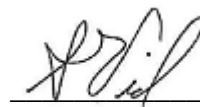
<sup>1</sup> The presiding judge has referred this case to me for recommendations for an ultimate disposition. [Doc. 32].

The Court will order Plaintiff to appear and show cause why she should not be ordered to pay “the reasonable expenses, including attorney’s fees,” incurred by each Defendant as a result of her failure to appear at her deposition on December 10, 2013. *See* Fed. R. Civ. P. 37(d)(3).

**IT IS THEREFORE ORDERED** that no later than **February 14, 2014**, counsel for each Defendant shall file an affidavit outlining the expenses, including attorney’s fees, incurred as a result of Plaintiff’s failure to appear at her deposition on December 10, 2013.

**IT IS FURTHER ORDERED** that Plaintiff appear telephonically on **March 5, 2014, at 10:00 a.m.** to show cause why she should not be ordered to pay Defendants’ expenses and fees incurred as a result of her failure to appear at her deposition, pursuant to Fed. R. Civ. P. 37(d)(3). Plaintiff and counsel may connect to the proceedings by calling Judge Vidmar’s Meet Me Line at **505-348-2357**. Plaintiff is admonished that **FAILURE TO APPEAR AS ORDERED MAY RESULT IN SANCTIONS, INCLUDING DISMISSAL OF THIS ACTION WITH PREJUDICE.** *See Ehrenhaus v. Reynolds*, 965 F.2d 920–21 (10th Cir. 1992)).

**IT IS SO ORDERED.**



---

**STEPHAN M. VIDMAR**  
**United States Magistrate Judge**